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August 15, 2024

VIA ECF

Honorable Andrew L. Carter, Jr.
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: ***Wilson v. Selip & Stylianou, LLP, J & E Process Servers,
and Benjamin Lamb***

Our Client: J&E Process Servers
Case No.: 1:24-cv-4108 (ALC)

Dear Judge Carter:

This firm represents Defendant J&E Process Servers ("J&E") in the above-referenced action. We write to oppose co-defendant, Selip & Stylianou, LLP's ("S&S") pre-motion conference request regarding S&S's proposed motion to dismiss J&E's cross-claims asserted in J&E's Answer to Plaintiff's Complaint for indemnification and contribution. J&E does not take a position on S&S's request for dismissal of Plaintiff's claims against it.

As for S&S's request to file a motion to dismiss J&E's cross-claims, J&E asserts that the matter is not ripe for determination at this stage. New York case law indicates that a pre-answer motion is generally considered too early to determine whether cross-claims for indemnification and contribution should be dismissed. For example, in *Masterwear Corp. v. Bernard*, the court determined that it was too early to bar a cross-claim for contribution or indemnification because such determinations must await the resolution of the plaintiff's claims against the defendant. *Masterwear Corp. v. Bernard*, 3 A.D.3d 305 (2004). This decision supports the view that the timing of the motion—before the main claims are resolved—does not justify dismissing cross-claims for indemnification and contribution. Additionally, in *Velazquez-Guadalupe v. Ideal Builders and Construction Services, Inc.*, a builder's motion for summary judgment to dismiss cross-claims was denied as premature, reinforcing the principle that such motions might be considered premature if the main action's issues are not yet resolved. These cases collectively indicate a judicial reluctance to dismiss indemnification and contribution cross-claims

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prematurely before the underlying issues in the main lawsuit are adjudicated. We note that discovery may yield evidence to supporting J&E's cross-claims.

Consequently, J&E respectfully requests that this Court deny S&S's pre-motion conference request to file a motion to dismiss J&E's cross-claims.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

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By: _____
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